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Committee on Enforced Disappearances
Ninth session

Summary record of the 140th meeting
Held at the Palais des Nations, Geneva, on Monday, 7 September 2015, at 3 p.m.

Chairperson: Mr. Decaux

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The meeting was called to order at 3 p.m.

Consideration of reports of States parties to the Convention

Initial report of Iraq (CED/C/IRQ/1; CED/C/IRQ/Q/1 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Iraq took places at the Committee table.*

2. **Mr. Ismail** (Iraq), introducing the initial report of Iraq (CED/C/IRQ/1), said that the report had been drafted on the basis of information gathered through a participatory process led by a committee comprising the Minister of Human Rights and other senior government officials. Various ministries as well as representatives of the Kurdistan Region had participated in the drafting process, and extensive consultations had been held with government agencies, NGOs and academics active in the field of human rights. Most of the observations received had been reflected in the final report.

3. Since the fall of the regime of Saddam Hussein in 2003, the Government of Iraq had been making great efforts to curb violence in the country and ensure respect for the rule of law and for civil liberties and human rights. Notwithstanding the difficulties it faced during the transitional period after the dictatorship, his Government recognized its obligation to promote and protect human rights and was working to incorporate international human rights standards into the country's legal system.

4. Enforced disappearance had been one of the main instruments of oppression used by the dictatorial regime from 1968 to 2003. Thousands of Iraqi citizens had been arrested on the basis of their political, ethnic or religious affiliation and had never been heard from again. International authorities such as the Special Rapporteur on the situation of human rights in Iraq and the Working Group on Enforced or Involuntary Disappearances had reported on the widespread phenomenon of enforced disappearance in the country.

5. In 2012, the Government had established a committee to look into suspected cases of enforced disappearance and provide documentary evidence to the Working Group. In the light of the seriousness of the human rights abuses perpetrated during the dictatorship, a number of transitional justice bodies had been set up to address that legacy. Numerous laws had been enacted in such areas as the treatment of political prisoners, the protection of mass graves and the payment of compensation to the families of the victims.

6. The Iraqi High Criminal Court played an important role in inquiries into cases of enforced disappearance and other serious crimes committed during the dictatorship. The definitions of such crimes as set out in the national legal system were consistent with those contained in the Rome Statute of the International Criminal Court. The High Criminal Court considered enforced disappearance to be a crime against humanity and it had already dealt with a number of such cases. For example, it had tried and convicted several members of the former regime for their participation in the Anfal campaign in 1988. Baath Party officials had also been convicted for using enforced disappearance as a means of suppressing the country's other secular as well as religious political parties.

7. The Government remained committed to human rights although current political circumstances and the extreme violence engulfing the country had led to delays in its reporting to international human rights institutions. His Government hoped that the international community would show determination in combating terrorism and

protecting minority ethnic groups in Iraq. The people of Iraq had paid a high price in fighting for their rights; they sought not only freedom but also security.

8. His Government had thoroughly looked into the matters raised in the Committee's list of issues (CED/C/IRQ/Q/1) and was resolved to fulfil its obligations despite the tremendous challenges it faced. His Government was grateful to the Committee and to civil society organizations for their work, which would help the country to overcome the remaining challenges.

9. **Mr. Huhle** said that the challenges posed by the current situation made it difficult for the Committee to know what was really happening in the country. He therefore asked the delegation to alert the Committee if any of the information cited was not up to date. He requested clarification about the status of the draft bill to combat enforced disappearance, as the Committee had received reports that the bill had been withdrawn after the recent reported dissolution of the Ministry of Human Rights.

10. He asked whether the Government intended to make the declarations provided for in articles 31 and 32 of the Convention, which related to the Committee's competence to receive and consider individual communications. It was not clear to him whether or not the provisions of the Convention could be directly applied by the courts. The delegation should explain the process for incorporating the Convention into national legislation.

11. He requested further information about the national mechanism for the filing of complaints through the Office of the United Nations High Commissioner for Human Rights referred to in the written replies to the list of issues (CED/C/IRQ/Q/1/Add.1). He wished to know specifically which authorities were responsible for handling requests for urgent action submitted to the State party by the Committee pursuant to article 30 of the Convention.

12. He wished to know the current status of the Ministry of Human Rights, which seemed to be the principal body for dealing with questions of enforced disappearance and handling requests for urgent action. If that Ministry no longer existed, the Committee needed to know which authorities had taken over its functions.

13. He asked if the bill to combat enforced disappearance, which set out a definition of enforced disappearance that was consistent with the definition under the Convention, had been passed into law. The definition of enforced disappearance under current Iraqi law did not accord with the Convention, as it did not distinguish between enforced disappearance and other situations involving missing persons. He therefore wished to know whether, under the new law, a distinction would be made between isolated acts of enforced disappearance and repeated or widespread acts — which could constitute crimes against humanity — so that appropriate prosecution could be sought and penalties imposed. Also, once adopted, could the law on enforced disappearance be repealed by other legislation?

14. Turning to the issue of statistics on enforced disappearance, he said that gathering data was difficult in situations such as the one in Iraq, given, for instance, the lack of access to areas under ISIL control. However, the Government must make every effort to get a true picture of the situation throughout the country, including the number of cases of enforced disappearance in occupied areas. He wondered why the Government had not been able to collect information on cases of enforced disappearance in the Kurdistan region, noting that there was a representative of that region in the delegation. Such data should be obtained and should be included as an integral part of the State party's report to the Committee.

15. With regard to the more than 10,000 cases of enforced disappearance that had occurred before 2003, he wished to know what steps the Government had taken to provide effective remedies to the victims and their families. Further details were needed about the 2,735 missing persons referred to in paragraph 9 of the replies to the list of issues. Did "missing persons" mean victims of enforced disappearance? Did the term include persons missing in combat? Greater specificity was needed, as a database lacking disaggregated statistics on missing persons would not provide a sufficient basis on which the Committee could formulate recommendations. He also wished to know how many of the persons listed as missing had subsequently been found alive, how many had been found dead and how many were still missing.

16. He said he was grateful to the State party's permanent mission in Geneva for its assistance in transmitting the Committee's requests for urgent action to the Government and encouraged the Government to continue its collaboration with the Committee under article 30 of the Convention. He wondered whether the requests for urgent action currently before the Committee formed part of the statistics on enforced disappearance that had been provided to it by the State party.

17. Lastly, he wished to know whether senior officials currently working in the various State-run security forces were liable to criminal prosecution for acts of enforced disappearance. He would welcome information on cases involving senior officials who had been tried or convicted of enforced disappearance under the Criminal Code.

18. **Mr. Hazan**, referring to paragraph 15 of the replies to the list of issues, said that he wished to know if the bill on enforced disappearance covered anyone committing the offence — whether or not the perpetrator was an Iraqi national — and if any of the conditions listed in article 19 of the bill would be sufficient for the law to apply.

19. Noting that there were no reported cases of enforced disappearance committed by the Iraqi army, he wondered whether any record had been kept of arrests made without a warrant by the military or other security forces on suspicion of terrorism, as such arrests had been referred to in a number of requests for urgent action submitted to the Committee. He would welcome information on complaints submitted to the State party about cases of enforced disappearance in areas occupied by non-State actors. He would appreciate, for example, further information on the 2004 invasion of Fallujah and the hundreds of victims reported to be buried in mass graves there. The Committee had also received information that 170 persons had been abducted near Samarra between June and October 2014, some of whom were later found dead and others were still missing. In addition, it had been notified of some 2,000 alleged cases of enforced disappearance committed by members of the police, security forces and militias and had received requests for urgent action in connection with abductions carried out by members of those groups.

20. The Government's relationship with the militias was not clear. Were they a part of the Government? Did they receive funds from the Iraqi State or from other States? He wondered whether allegations of human rights violations committed by the militias, including cases of enforced disappearance, had been investigated. Were such armed groups sanctioned by law or were they operating illegally?

21. Inasmuch as the military lent support to the civilian authorities in their investigation of criminal offences committed on military premises, including with regard to protecting evidence and witnesses, he was concerned that such support might affect the impartiality and effectiveness of the investigations.

22. Turning to paragraph 17 of the replies to the list of issues, he said that it was not clear to him, in criminal case No. 298/C/2005, if it was a case of someone accused of committing an act of enforced disappearance being found innocent or if it was a civil

case against the State for not having released a prisoner; if the latter, was the continued detention of the prisoner being interpreted as a case of enforced disappearance? Further details were also requested on the Amnesty Act.

23. He asked if he had understood correctly that article 40 of the Criminal Code allowed a defence of superior orders to be used to justify unlawful acts by the military and security forces. If so, he wished to know how that meshed with the State party's obligation to investigate all persons responsible for an enforced disappearance and not just the superior officers involved.

24. With reference to the table in paragraph 17, he would like to know whether any of those 16,533 victims of terrorism had been subjected to enforced disappearance. Were the 110 victims of enforced disappearance mentioned in paragraph 18 counted among those cases or did they constitute separate cases?

25. Statistical data had not been provided on the investigations conducted into cases of enforced disappearance and on the sentences handed down. Information was also needed on the reparation provided to victims other than the 13 cases referred to in the table in paragraph 18. More information was needed as well on the pending cases in the enforced disappearance file mentioned in paragraph 122 of the report.

26. Turning to paragraph 19 of the written replies, he would welcome further details on the five enforced disappearance cases brought against senior officials of the former regime before the High Criminal Court, including the number of victims, the number and rank of the perpetrators and the sentences imposed. He also wished to have more information on the efforts made to investigate abductions by ISIL and other groups.

27. He asked if he had understood correctly from paragraph 20 of the replies that there were no specialized units in the police, prosecution service or other security forces to investigate enforced disappearances. If that was the case, he wished to know whether the State party's legislation allowed for setting up a special prosecutor's office to handle such offences. He was concerned that complaints received by the Iraqi High Commission for Human Rights had been transmitted not to the Office of the Public Prosecutor but to the Ministry of the Interior and the Ministry of Justice, which is where some of those allegedly responsible for enforced disappearances worked. He wished to have more detailed information on how the High Commission dealt with complaints of enforced disappearance.

28. Referring to the State's obligations in relation to the investigation of allegations of enforced disappearance, he asked the delegation to report on the status of the witness protection bill drafted by the Ministry of Human Rights, including the proposed structure, resources and mode of action, and what would become of this type of legislation now that the Ministry had apparently been dissolved. He wondered whether the witness protection structure could be used for implementing protection measures ordered by the Committee under its urgent action procedure. He wished to know whether there were any programmes or resources for providing psychological support to victims and witnesses during proceedings in cases involving serious human rights violations.

29. Turning to the reply to paragraph 16 of the list of issues, he asked whether a police officer who had been accused of committing an enforced disappearance but had not been detained was not subject to suspension and would be allowed to continue participating in the investigation into the crime in which he was involved. He also wished to know whether the judicial authorities could choose to carry out investigations with a different, more impartial security force than the one where the accused person worked.

30. **Ms. Janina** said that she was concerned that the Convention did not enjoy a higher status than national law. She asked which provisions would be applied by the Iraqi courts in the event of a conflict between the provisions of the Convention and domestic legislation. Had there been any cases in which the courts had referred to the provisions of the Convention? If not, did the State party consider that the absence of legislation criminalizing enforced disappearance had an influence in that regard? Referring to article 16, on non-refoulement, she asked how authorities handled persons who claimed that they would be at risk of enforced disappearance if returned. Was there any investigation into individual circumstances and was the general human rights situation in the country of origin taken into account? She wished to know whether the State party had plans to introduce specific legislation to prohibit refoulement in such cases. She also wished to know whether there were any policies or strategies in place that addressed the specific situation of women, either as victims of enforced disappearance or as relatives of victims.

31. **Mr. Yakushiji** said that the State party's reply to paragraph 12 of the list of issues did not cover acts committed by militias in 2014 that could amount to enforced disappearances. Noting that the Committee's sources referred to the alleged abduction of several persons by militias, he requested information on the measures taken by the State party to investigate those allegations. He would appreciate further information on the Government's efforts to deal with enforced disappearances committed by ISIL, including how it investigated and documented such acts and how it brought those responsible to justice. In that connection, he would welcome further information on the remedies available to the victims of enforced disappearances perpetrated by such groups. He wondered whether the right to reparations provided for in article 21 of the bill to combat enforced disappearance would apply to abductions perpetrated by State organs as well as by organized groups.

32. **Mr. Corcuera Cabezut** asked what status the Convention had in the domestic legal order. Drawing attention to the fact that, under the Convention, the obeying of an order could not be invoked to justify an enforced disappearance, he asked whether the provision in domestic law stipulating that superior orders could not be questioned would be repealed by virtue of the incorporation of the Convention into Iraqi law.

The meeting was suspended at 4.25 p.m. and resumed at 4.45 p.m.

33. **Mr. Huhle** said that the Committee had serious concerns in relation to secret detention. Although the State party asserted in its written replies to the list of issues that there were no secret detention facilities, many of the Committee's sources indicated that such facilities did in fact exist. In any case, even if there were no secret detention facilities as such, that did not mean that secret detention could not take place. The issue was not necessarily the place of detention itself but rather the refusal to provide information on the whereabouts of a detained person to relatives and others with a legitimate interest. The Committee wished to know about occurrences of disappearances involving secret detention and would welcome further information on legislative, administrative and other measures to prevent secret detention. It would also welcome details on the investigations carried out into the 36 cases of alleged enforced disappearance brought before the Committee under the article 30 urgent action procedure. In that context, he requested information on the training provided to security officers, not only the police and army officers but also members of the new security forces that had been established, to ensure that they were aware of their obligation to provide information whenever they detained an individual.

34. With reference to the State party's reply to question 19 of the list of issues, he sought clarification about the obligation to record in an electronic and manual register and within 24 hours of an arrest the name of the arrested person, the location of the place of detention and the grounds and legal provision that had led to the arrest. Did it

apply only to the police and the military or also to other security forces? He was concerned that it appeared to apply to places of detention administered by the Ministry of Justice but not to those administered by the Ministry of Defence and any other entity. He was also concerned that the legal basis for that obligation appeared to be an administrative order from 2014, which could easily be retracted without the involvement of any legislative body. Noting that there was no central register of detained persons in Iraq, he stressed that it was of the utmost importance that such a register should be established, as it was one of the best means of preventing enforced disappearances. The Committee would be interested to know how registers of detainees were kept up to date, who oversaw the registers and how often they were checked to ensure that any failure to register a person could be discovered and sanctioned. The Committee wished to know what measures the Government had taken as follow-up to the urgent action requests in terms of sanctioning the responsible officers and preventing those offences from reoccurring. The Committee would be interested to know if the State party had plans to formulate an effective overall strategy to prevent secret detention and guarantee the right of all persons to the truth and information, as provided for in the Convention.

35. **Mr. Hazan** said that he would welcome further details on the content of the bill on reparations for victims, its passage through parliament and its status following the dissolution of the Ministry of Human Rights. He expressed concern that the article of the bill cited in the written replies did not cover all of the forms of reparation provided for in article 24, paragraph 5, of the Convention, such as satisfaction, including restoration of dignity and reputation, and guarantees of non-repetition. Referring to paragraph 35 of the written replies, he wondered whether there were any disaggregated statistics on the compensation provided to victims of enforced disappearance and any data prior to 2014. He asked whether the compensation provided was purely financial or whether it included psychological or medical assistance and what the compensation would be equivalent to in a major currency. Had compensation been provided for enforced disappearance since the entry into force of the Convention?

36. He requested more detail on the mechanisms to locate disappeared persons and who the families of disappeared persons should contact. He asked whether the amendment to the Mass Graves Act had been promulgated; if not, what was its legal status currently? With regard to the 3,502 bodies found in 202 mass graves as indicated in paragraph 36 of the replies, he asked how many of those bodies had been identified and returned to the families and what happened to the bodies that had not been identified. He asked whether there was a DNA database on family members of disappeared persons and other ante-mortem information to help identify remains from mass graves and how the identification of remains was carried out.

37. He wished to know whether the authorities continued to look for disappeared persons once a certificate of presumed death had been issued and whether death certificates were used to provide access to social welfare benefits or had an impact on family rights.

38. The delegation should indicate whether there were cases in the State party in which children had been disappeared, whether measures were taken to prevent the disappearance of children, whether it was possible to overturn custody decisions in cases involving orphaned children and what legal remedies were available to the extended families of children who had been orphaned. He asked whether the bill on enforced disappearance included provisions on the crime of substitution of identity. He requested clarification on the Juvenile Welfare Act's procedures concerning minors who had infringed the law and asked whether the provisions were also applicable to

children who had been orphaned, and if so, whether such cases were handled by a criminal or civil court judge.

39. **Mr. López Ortega** requested detailed information on the custody regime for detainees and how their right to communicate with family members during their detention was guaranteed, who was able to visit detainees as part of a family visit, whether detainees were entitled to legal assistance, whether foreign detainees enjoyed the same rights as citizens in detention and whether any restrictions could be placed on their rights.

40. He asked whether registers of detainees included all the identity information set out in article 17, paragraph 3, of the Convention and whether the State party fulfilled the requirements under article 18 of the Convention to provide relatives with the prescribed information about a person's detention. The delegation should explain how relatives and lawyers were informed that a detainee was due to be transferred to a different place of detention. The delegation should indicate whether, in accordance with article 20 of the Convention, any limits were placed on information about a person deprived of his or her liberty and which authority set those limitations. He asked which authority was responsible for monitoring and enforcing the right to information provided for in article 18 of the Convention and how officials or authorities were sanctioned for the failure to respect those provisions. He asked what policies the Government planned to implement to ensure the effective enforcement of the rights and guarantees contained in articles 17 and 18 of the Convention.

41. **Mr. Corcuera Cabezut** said that it was important to presume that disappeared persons were alive until their whereabouts had been determined in order to ensure that the authorities continued to investigate their cases. He asked whether the State party intended to adopt legislation that addressed the financial and family law issues which arose following a disappearance and that did not require the authorities to presume that the individual concerned had died.

42. **Mr. Figallo Rivadeneyra**, noting that the Defence of National Security Act No. 1 of 2004 was a pre-constitutional law, requested clarification of the rights that could be restricted under that law if a state of emergency was declared. The delegation should explain how the provisions of that law permitting the Prime Minister to order the detention or arrest of a person, or to delegate that power to military or civilian leaders, were consistent with article 9 of the Convention.

The meeting was suspended at 5.20 p.m. and resumed at 5.35 p.m.

43. **Mr. Zebari** (Kurdistan Regional Government, Iraq) said that, under the Baath regime, the Iraqi people, and the Kurdish people in particular, had suffered decades of human rights violations including ethnic cleansing, chemical bombardment, forced displacement and genocide. Policies pursued by the dictatorship from 1968 to 2003 had led to the disappearance of thousands of persons from all ethnicities and religions. The Kurdistan Regional Government reaffirmed its commitment to the Convention and was working to grant compensation and reparations to victims and the families of victims of enforced disappearance, which was a punishable offence.

44. The Anfal campaign had led to the disappearance of hundreds of thousands of persons, notably Kurdish Feylis. Enforced disappearances had continued after the fall of the Baath regime and up to the present day, as ISIL had detained thousands of Kurdish Yazidis and taken them to unknown locations. The scale of enforced disappearances had destroyed families, the economy and the social fabric of society, and the ongoing situation represented a significant challenge to Iraqi officials.

45. Despite the amendments made to the country's criminal law, certain provisions were unjust and did not provide adequate legal protection from enforced

disappearance. Accession to the Convention was a welcome step and the Kurdistan Regional Government was taking action to end the crime of enforced disappearance, particularly since the Kurdish people were a vulnerable group that suffered disproportionately from that crime. He called on the United Nations and all relevant organizations to document the crimes committed against the Kurdish people since the 1960s, in particular against the Feyli and Yazidi peoples.

46. The Kurdistan Regional Government had made progress in most of the areas raised by Committee members in terms of law and practice. Significant work to uncover mass graves had been under way since 2005 and detention facilities followed procedures for the registration of detainees, family visits and the provision of legal assistance. Officials from the United Nations Assistance Mission for Iraq had made 67 visits to one prison in Arbil, for example, and most international visitors were afforded similar access to prison facilities.

47. More than US$ 100,000 had been allocated to rescuing Yazidis who had been disappeared or held prisoner by ISIL. As at the end of August 2015, 2,200 prisoners or disappeared persons had been rescued from areas under ISIL control. The Kurdistan Regional Government was planning military action and rescue missions in ISIL-controlled areas. In areas that had already been liberated, action groups, international organizations and government ministries were working to provide services and compensation and to register displaced persons.

The meeting rose at 5.50 p.m.

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